

Senate Bill No. 948

CHAPTER 352

An act to amend Sections 408, 620, 2611.1, 2923, 3698.8, 4675, 4676, 4842, 4911, 5096, 5097.2, and 5150.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 26, 2011. Filed with
Secretary of State September 26, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 948, Committee on Governance and Finance. Property taxation.

(1) Existing property tax law provides that information and records in the assessor's office are not public documents and shall not be open to public inspection, except as specified. Existing law also requires the assessor to disclose certain appraisal information to specified state and local agencies.

This bill would require the assessor, upon the written request of the tax collector, to provide to the tax collector information for the preparation and enforcement of tax sales, in accordance with specified procedures, and would require the tax collector to reimburse the assessor for the actual and reasonable costs incurred by the assessor for providing this information. The bill would require the tax collector to add those costs to the delinquent taxes and other costs, as specified. The bill would require the tax collector or his or her designated employee to certify specified declarations under penalty of perjury. By expanding the crime of perjury, this bill would impose a state-mandated local program.

By requiring new duties of local government officials with respect to providing property tax sales information, the bill would impose a state-mandated local program.

(2) Existing property tax law establishes a procedure by which an assessee of property taxes may pay taxes under protest in cases in which the assessor does not, upon or prior to completion of the local tax roll, send a notice to an assessee whose property was not on the prior year's secured roll, or to an assessee of real property on the local secured roll whose property's full value has increased. Under existing property tax law, a protest is required to be made by filing with the tax collector, together with the payment of the taxes or their first installment, a petition for assessment reduction on the form prescribed by the county board, which form the collector is to forward to the clerk of the county board with the notation that taxes were paid under protest.

This bill would modify this procedure to instead require protests to be made by filing with the clerk of the county board a petition for assessment reduction on the form prescribed by the county board. The bill would also remove the requirement that protests be filed together with the payment of

the taxes or their first installment and would make related technical and nonsubstantive changes.

(3) Existing property tax law allows any county department, officer, or employee that is legally responsible for the collection of any amount owing the county to apply to the county board of supervisors for discharge of that responsibility on the grounds that the amount owed is too small to justify the costs of collection.

This bill would revise that provision to authorize a discharge from accountability for the collection of the amount if performed in accordance with specified procedures.

(4) Existing property tax law authorizes any tax collector charged with collecting any delinquent taxes on unsecured property to apply to the county board of supervisors for a discharge of the responsibility on the grounds that the amount is too small to justify the costs of collection.

This bill would revise those provisions to authorize a county department, officer, or employee charged with that responsibility to apply for a discharge from accountability if performed in accordance with specified procedures.

(5) Existing property tax law requires each county assessor to determine the assessed value of taxable real property and personal property, and requires each county tax collector to collect the taxes levied on those assessed values. Existing property tax law authorizes a county tax collector to sell tax-defaulted property after a specified amount of time. Existing property tax law also authorizes the tax collector, upon the recommendation of county counsel, to remove a parcel from a tax sale, as provided, and requires the tax collector to notify the Controller of that removal.

This bill would eliminate the tax collector's notification requirement.

(6) Existing property tax law generally authorizes a county tax collector to sell tax-defaulted property 5 years or more after that property has become tax defaulted. Existing law authorizes any party of interest in the property to file with the county a claim for the excess proceeds from the sale, at any time prior to the expiration of one year following the recordation of the tax collector's deed to the purchaser. Existing property tax law requires any person or entity that in any way acts on behalf of, or in place of, any party of interest with respect to filing a claim for any excess proceeds to submit proof with the claim that the amount of excess proceeds has been disclosed to the party of interest, and that the party of interest has been advised of the right to file a claim for the excess proceeds on his or her own behalf.

This bill would additionally require any person or entity that in any way acts on behalf of, or in place of, any party of interest with respect to filing a claim for any excess proceeds to submit proof with the claim that the source of the excess proceeds has been disclosed to the party of interest, and that the party of interest has been advised of the right to file a claim for the excess proceeds on his or her own behalf, as provided.

(7) Existing property tax law requires a county to provide notice, including publishing notice in a newspaper, of the right to claim the excess proceeds from the sale of a tax-defaulted property.

This bill would eliminate the requirement to publish the notice in a newspaper if the cost to publish is equal to or more than the excess proceeds from the sale.

(8) Existing property tax law requires a tax collector to publish various publications within a specified time period, relating to, among other things, notice of impending default for failure to pay taxes on real property and notice of intended sale of tax-defaulted property by the tax collector. That law authorizes a publication to be republished, if any error or defect has been carried into any publication, made in the same manner as the original publication and for not less than one week.

This bill would authorize, if the error or defect is discovered after the time required for the original publication, the publication to be republished within 60 days of the original time period required. This bill would require the republication to not adversely affect the right of a taxpayer, assessee, or other private party in a material way.

(9) Under existing property tax law, if a taxpayer mistakenly pays property taxes on property that he or she does not own, the property tax is transferred to the property of the taxpayer for which the payment is intended. Existing property tax law requires the county tax collector, upon being convinced by substantial evidence of a mistake, to refund property taxes mistakenly paid in the case in which there is no property of the taxpayer to which the payment may be applied. Existing property tax law requires these actions to be taken at any time before a guaranty or certificate of title issues respecting the unintended property and before 2 years have elapsed since the date of payment.

This bill would instead require a refund under these provisions to be made within 60 days of the county verifying that the payment was paid by mistake, or would subject the credit or refund to interest, as specified.

By changing the manner in which county officials administer property tax refunds, this bill would impose a state-mandated local program.

(10) Existing property tax law requires property taxes to be refunded if, among other circumstances, the taxes were paid on an assessment in excess of the equalized value of the property as determined by the county board of equalization and authorizes a county tax collector or county auditor to refund taxes within 4 years of payment if the amount paid exceeds the amount due on the property as shown on the roll.

This bill would revise this requirement to apply if the taxes were paid on an assessment in excess of the value of the property as determined by the county assessment appeals board. The bill would revise the authorization to also apply if the amount paid exceeds the amount due by more than \$10.

By imposing new duties upon county officials with respect to the administration of property tax refunds, this bill would impose a state-mandated local program.

(11) Under existing property tax law, a plaintiff is entitled to recover interest on penalties assessed for failure to file a property statement, as specified, in which recovery is allowed by the court, from the date of the filing of the claim for refund.

This bill would correct an erroneous cross-reference in this provision.

(12) The California Constitution requires that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(13) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), (e), and (g), any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, disabled veterans' exemption claims, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees, or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the county recorder when conducting an investigation to determine whether a documentary transfer tax is imposed, the Controller, employees of the Controller for property tax postponement purposes, probate referees, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Lands Commission, the State Department of Social Services, the Department of Child Support Services, the Department of Water Resources, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Lands Commission, or the Department of

Water Resources pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor may not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, may not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

(3) If the assessor fails to permit the inspection or copying of materials or information as requested pursuant to subdivision (d) or (e) and the assessor introduces any requested materials or information at any assessment appeals board hearing, the assessee or his or her representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

(g) Upon the written request of the tax collector, the assessor shall provide to the tax collector information for the preparation and enforcement of Part 6 (commencing with Section 3351). The tax collector shall certify to the assessor that he or she needs the contact information to assist with the preparation and enforcement of Part 6 (commencing with Section 3351). The assessor shall provide the information, which may not include social security numbers. Any information provided to the tax collector pursuant to this subdivision shall not become a public record and shall not be open to public inspection. The tax collector shall reimburse the assessor for the actual and reasonable costs incurred by the assessor for providing the information to administer this subdivision. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent taxes and include the costs incurred subject to Sections 4112 and 4672.2. The tax collector or his or her designated employee shall, under penalty of perjury, certify to the assessor that he or she needs the information to assist with the preparation and enforcement of Part 6 (commencing with Section 3351), and that the information provided pursuant to this subdivision that is not public record and that is not open to public inspection shall not become public record and shall not be open to public inspection.

SEC. 2. Section 620 of the Revenue and Taxation Code is amended to read:

620. If the assessor does not send a notice pursuant to Section 619 or 621 to an assessee whose property was not on the prior year's secured roll, or to an assessee of real property on the local secured roll whose property's full value has increased, then the assessee may pay taxes under protest. If payments are made in installments, the protest need not be repeated with the second installment. Protests shall be made by filing with the clerk of the county board, a petition for assessment reduction on the form prescribed by the county board. The county board may, after receipt of the petition for assessment reduction, hold a public hearing at the next regular board meeting, notice of time and place of which shall be sent to the person paying the tax under protest at the address stated in the protest or if no such address is stated, then to the address of the assessee according to the last equalized assessment roll. If the taxes are so paid and the assessee has not previously applied for a reduction of the assessment, the county board, at its next annual meeting as an equalization board, shall equalize the assessment in the manner

prescribed by Article 1 (commencing with Section 1601) of Chapter 1 of Part 3 of this division.

The tax rate fixed for property on the roll on which the property so equalized appears at the time of its original assessment shall be applied to the amount of the equalized assessment, determined in accordance with the preceding paragraph. In the event that the resulting figure is less than the tax computed, the taxpayer shall be liable for tax only for the lesser amount, and the difference shall be canceled. If the taxpayer has already paid the tax previously computed, the difference shall be refunded to him or her pursuant to Chapter 5 (commencing with Section 5096) of Part 9 of this division, as an erroneously collected tax.

If any taxes are paid under protest pursuant to this section, the taxing agency to which the taxes are paid may, in accordance with Section 26906.1 of the Government Code, impound those taxes until the final disposition of the claim or action respecting the protest. No impounding of taxes is required.

SEC. 3. Section 2611.1 of the Revenue and Taxation Code is amended to read:

2611.1. Any county department, officer, or employee charged by law with the collection of any county tax assessment, penalty or cost, license fees or money owing the county for any reason, that is due and payable, may file a verified application with the board of supervisors for a discharge from accountability for the collection of the tax assessment, penalty or cost, license fees or money owing the county for any reason in accordance with Sections 25257, 25258, 25259, and 25259.5 of the Government Code.

SEC. 4. Section 2923 of the Revenue and Taxation Code is amended to read:

2923. Any county department, officer, or employee charged by law with the collection of any delinquent taxes on unsecured property may file a verified application with the board of supervisors for a discharge from accountability for the collection of the taxes, penalty, interest, or any other charge pertaining thereto, in accordance with Sections 25257, 25258, 25259, and 25259.5 of the Government Code.

SEC. 5. Section 3698.8 of the Revenue and Taxation Code is amended to read:

3698.8. The tax collector, upon the recommendation of county counsel, may remove a parcel from the tax sale if it is deemed the removal is in the best interest of the county.

SEC. 6. Section 4675 of the Revenue and Taxation Code is amended to read:

4675. (a) Any party of interest in the property may file with the county a claim for the excess proceeds, in proportion to his or her interest held with others of equal priority in the property at the time of sale, at any time prior to the expiration of one year following the recordation of the tax collector's deed to the purchaser.

(b) After the property has been sold, a party of interest in the property at the time of the sale may assign his or her right to claim the excess proceeds

only by a dated, written instrument that explicitly states that the right to claim the excess proceeds is being assigned, and only after each party to the proposed assignment has disclosed to each other party to the proposed assignment all facts of which he or she is aware relating to the value of the right that is being assigned. Any attempted assignment that does not comply with these requirements shall have no effect. This paragraph shall apply only with respect to assignments on or after the effective date of this paragraph.

(c) Any person or entity who in any way acts on behalf of, or in place of, any party of interest with respect to filing a claim for any excess proceeds shall submit proof with the claim that the amount and source of excess proceeds have been disclosed to the party of interest and that the party of interest has been advised of his or her right to file a claim for the excess proceeds on his or her own behalf directly with the county at no cost.

(d) The claims shall contain any information and proof deemed necessary by the board of supervisors to establish the claimant's rights to all or any portion of the excess proceeds.

(e) No sooner than one year following the recordation of the tax collector's deed to the purchaser, and if the excess proceeds have been claimed by any party of interest as provided herein, the excess proceeds shall be distributed on order of the board of supervisors to the parties of interest who have claimed the excess proceeds in the order of priority set forth in subdivisions (a) and (b). For the purposes of this article, parties of interest and their order of priority are:

(1) First, lienholders of record prior to the recordation of the tax deed to the purchaser in the order of their priority.

(2) Second, any person with title of record to all or any portion of the property prior to the recordation of the tax deed to the purchaser.

(f) In the event that a person with title of record is deceased at the time of the distribution of the excess proceeds, the heirs may submit an affidavit pursuant to Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code, to support their claim for excess proceeds.

(g) Any action or proceeding to review the decision of the board of supervisors shall be commenced within 90 days after the date of that decision of the board of supervisors.

SEC. 7. Section 4676 of the Revenue and Taxation Code is amended to read:

4676. (a) When excess proceeds from the sale of tax-defaulted property exceed one hundred fifty dollars (\$150), the county shall provide notice of the right to claim the excess proceeds, as provided in this section.

(b) No later than 90 days after the sale of the property, the county shall mail written notice of the right to claim excess proceeds to the last known mailing address of parties of interest, as defined in Section 4675. The county shall make a reasonable effort to obtain the name and last known mailing address of parties of interest.

(c) If the last known address of a party of interest cannot be obtained, the county shall publish notice of the right to claim excess proceeds in a

newspaper of general circulation in the county. Publication is not required if the cost to publish is equal to or greater than the amount of the excess proceeds. The notice shall be published once a week for three successive weeks and shall commence no later than 90 days after the sale of the property.

(d) The cost of obtaining the name and last known mailing address of parties of interest and of mailing or publishing the notices required under this section shall be deducted from the excess proceeds and shall be distributed to the county general fund.

SEC. 8. Section 4842 of the Revenue and Taxation Code is amended to read:

4842. (a) If the error or defect is discovered after the time required for the original publication, the publication may be republished within 60 days of the original time period required. The republication shall not adversely affect the right of a taxpayer, assessee, or other private party in a material way.

(b) The republication shall be made for not less than one week.

SEC. 9. Section 4911 of the Revenue and Taxation Code is amended to read:

4911. (a) If an assessee or agent of the assessee, by mistake, pays the tax on other than the property intended and by substantial evidence convinces the tax collector that the payment was intended for another property, the tax collector shall cancel the credit on the unintended property and transfer the payment to the property intended as prescribed in this article at any time before a guaranty or certificate of title issues respecting the unintended property and before two years have elapsed since the date of payment.

(b) If through no fault of the assessee or agent of the assessee, a tax payment is credited to property other than the property intended and the taxpayer by substantial evidence convinces the tax collector that the payment should have been credited to another property, the tax collector shall cancel the credit on the unintended property and transfer the payment to the property intended as prescribed in this article at any time before a guaranty or certificate of title issues respecting the unintended property and before two years have elapsed since the date of the payment.

(c) If any person mistakenly pays an amount of tax and there is no property of that person in the county to which that payment properly applies, the tax collector shall, by being convinced upon substantial evidence that the payment was a mistake, cancel the payment and return the amount paid to that person, as prescribed in this article at any time before a guaranty or certificate of title issues respecting the unintended property and before two years have elapsed since the date of the payment.

(d) The county shall transfer a payment pursuant to subdivision (a) or return a payment pursuant to subdivision (c) within 60 days of the later of the date of the county verifying that the payment was paid by mistake or the date the payment is not subject to chargeback, dishonor, or reversal, or shall pay interest as prescribed in subdivision (e).

(e) If a refund to an assessee or agent of the assessee is created as a result of subdivision (a) or (c), interest as prescribed by Section 5151 shall not be paid. However, if the refund was not issued within 60 days of the county verification of the refund or credit due, interest shall be paid from the date of verification.

SEC. 10. Section 5096 of the Revenue and Taxation Code is amended to read:

5096. Any taxes paid before or after delinquency shall be refunded if they were:

- (a) Paid more than once.
- (b) Erroneously or illegally collected.
- (c) Illegally assessed or levied.
- (d) Paid on an assessment in excess of the ratio of assessed value to the full value of the property as provided in Section 401 by reason of the assessor's clerical error or excessive or improper assessments attributable to erroneous property information supplied by the assessee.

(e) Paid on an assessment of improvements when the improvements did not exist on the lien date.

(f) Paid on an assessment in excess of the value of the property as determined pursuant to Section 1614 by the county assessment appeals board.

(g) Paid on an assessment in excess of the value of the property as determined by the assessor pursuant to Section 469.

SEC. 11. Section 5097.2 of the Revenue and Taxation Code is amended to read:

5097.2. Notwithstanding Sections 5096 and 5097, any taxes paid before or after delinquency may be refunded by the county tax collector or the county auditor, within four years after the date of payment, if:

- (a) Paid more than once.
- (b) The amount paid exceeds the amount due on the property as shown on the roll by an amount greater than ten dollars (\$10).
- (c) The amount paid exceeds the amount due on the property as the result of corrections to the roll or cancellations after those taxes were paid.
- (d) In any other case, where a claim for refund is made under penalty of perjury and is for an amount less than ten dollars (\$10).

(e) The amount paid exceeds the amount due on the property as the result of a reduction attributable to a hearing before an assessment appeals board or an assessment hearing officer.

SEC. 12. Section 5150.5 of the Revenue and Taxation Code is amended to read:

5150.5. In any action in which the recovery of a penalty assessed pursuant to paragraph (1), (2), or (3) of subdivision (c) of Section 830 is allowed by the court, the plaintiff shall be entitled to interest on the penalties for which recovery is allowed, at the applicable rate or rates in effect from time to time and payable on a refund of tax, as provided in Section 5151. This interest shall be payable from the date of filing of the claim for refund, but in no event earlier than the date of payment of the penalty or installments

thereof sought to be refunded, to the date of entry of judgment. This accrued interest shall be included in the judgment.

SEC. 13. The Legislature finds and declares that Section 1 of this act, which amends Section 408 of the Revenue and Taxation Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the confidentiality of information relating to tax delinquencies with respect to the enforcement duties of the tax collector, as authorized by this act, it is in the state's interest to limit public access to this information.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution, and because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.